Supreme Court, U.S.
DEC 22 1999

No. 99-759

In The

Supreme Court of the United States

LILLIAN HUCKABY ROACH,

Petitioner,

v.

JAMES EVERETT ROACH,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals For The State Of Georgia

PETITIONER'S REPLY BRIEF

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OPINIONS BELOW

Contrary to the statements of Respondent all relevant opinions issued below were noted. The appeal was from the trial court judgment of January 14, 1998. That judgment and all appellate action thereafter is included in the appendix.

STATEMENT OF JURISDICTION

Petitioner presented constitutional issues in the second motion for reconsideration submitted to the Supreme Court of Georgia (A-19-36 and A-7).

STATEMENT OF THE CASE

Respondent has mischaracterized the consideration given by the trial court to the issues of the complaint, particularly those related to the second and third motions for summary judgment from which appeal was made.

The only hearing on the second and third motions for summary judgment was on April 1, 1996, two years before the court entered a judgment on January 14, 1998.

Respondent's failure or refusal to provide discovery did result in delays, several motions before the court, and orders by the court. However of the dates listed by Respondent, there is no record of hearings on April 2, 1997 or April 7, 1997.

There were hearings for a temporary restraining order to limit Respondent's use of funds in dispute, but

no hearing was ever held directly on the causes of action in Petitioner's complaint for equitable relief or declaratory judgment.

The delays by the trial court and the inaccurate characterization of facts by Respondent must not be permitted to give the false impression that the issues were well and carefully considered.

REASONS FOR GRANTING THE WRIT

A. The Procedural Denial Of The Appeal By The Court Of Appeals Of Georgia Violated The Due Process Clause Of The U. S. Const., amend. XIV.

Right to appeal a trial court judgment to the Court of Appeals of Georgia and the Supreme Court of Georgia is established by Ga. Const., Article VI, Sections V and VI. Statutory procedures are provided to facilitate the appeals. Such procedures " . . . shall be liberally construed so as to bring about a decision on the merits of every case appealed . . . " (Ga. Code Ann. § 5-6-30).

Those procedures and Georgia case law become the State created rules that ought to be the key that unlocks the door to consideration of issues raised on appeal?

Jordan v Johnson, 223 Ga App 875, 479 SE2nd 175 (1996), cited by Respondent, sets out the rule at Page 876: "An appellant may choose to have only a portion of the record below transmitted to this court." While having the right to provide a limited record, the appellant will remain obligated "to demonstrate error by the record".

See also *Drummond v Gladson*, 219 Ga App 521, 524(2), 465 SE2nd 687 (1995) (Beasley, C.S. separate majority concurring opinion) for background.

Johnson v Knebel, 222 Ga App 522, 523(1), 474 SE2nd 636 (1996) and *Layfield v Southeastern Constr.*, 229 Ga App 71, 73, 492 SE2nd 921 (1997) continue to apply the test established by *Jordan v Johnson*, Supra and *Drummond v Gladson*, Supra.

The right to appeal requires the Petitioner to provide a record sufficient to demonstrate error, not an entire record.

Having been presented with a partial record as authorized by Georgia law, it is then the obligation of the appellate court to examine the errors alleged on appeal and the record provided on appeal. The purpose is for the appellate court to determine whether the appellant has demonstrated error by the record.

According to the Court of Appeals of Georgia the key to the door of appellate consideration is an allegation of error (Enumeration of Errors, Ga. Code Ann. § 50-6-40) and a record demonstrating harmful error.

But in this case the Georgia Court of Appeals failed or refused to consider the alleged errors, declaring it "must look at the entire record" (A-2). Without that entire record the Court of Appeals of Georgia gave no consideration to the Enumeration of Errors or to the record provided relative to those alleged errors.

Petitioner was denied a hearing on the issues raised by Petitioner's Enumeration of Error.

Petitioner/Appellant was denied the right to appeal by the further denial of the right to the review process created by Georgia code and case law. The Court of Appeals of Georgia provided no "reasonable or appropriate condition precedent", *Jones v Union Guano Co.*, 264 U.S. 171, 181 (1924), for refusal to provide the right to an established procedure. This was a violation of the Due Process Clause.

Respondent cites *Brown v Frachiseur*, 247 Ga 463, 277 SE2nd 16 (1981) in support of the decision of the Georgia Court of Appeals. The Court of Appeals of Georgia relied on *Brown v Frachiseur*, Supra as the cornerstone to the decision (A-2). That reliance is misplaced.

The court in *Brown v Frachiseur*, Supra was an appeal from a summary judgment but did not require an entire record. While the Supreme Court of Georgia denied the appeal in that case because there was a complete absence of any record of proceedings appealed from, the court stated the rule that the appellant need submit only the record of "those items which will enable the appellate court to ascertain" the issues.

The Court of Appeals of Georgia improperly converted that decision on a particular set of facts to a gatekeeper roll in which the key to consideration on appeal is no longer that the records be adequate to demonstrate errors, but in all cases, regardless of errors alleged, an entire record.

Georgia law requires appellants to focus their arguments on appeal on specific Enumeration of Error (Ga. Code Ann. § 5-6-40). The appellant must then "demonstrate error by the record", *Jordan v Johnson*, Supra.

How is burden on the court, the efficiency of the court, or the appeal process improved by requiring an "entire record" consisting of the volumes of material created over three (3) years, including materials not related to issues raised by the Enumeration of Errors? What reasonable basis or appropriate condition justifies denial of the right to appeal and the abandonment of State created procedural rights of consideration of a partial record?

Respondent has not argued any fact, issue, or error that would require the entire record, and has not argued any reasonable basis for denial of a partial record in this case. No case law has been cited that would justify the denial of a hearing or meet the test of "reasonableness" set by *Jones v Union Guano Co.*, Supra. Being deprived of an opportunity for a hearing is a violation of due process, *Logan v Zimmerman Brush Co.*, 455 U.S. 422 (1982).

The Petitioner's right to due process has been violated. The actions of the State violate the Due Process Clause of the U. S. Const., amend XIV.

B. The Denial Of Petitioner's Writ Of Certiorari By The Supreme Court Of Georgia Was A Denial Of Procedural And Property Rights Created By The State.

The denial of the Writ of Certiorari by the Supreme Court of Georgia was a denial of due process.

The Supreme Court of Georgia had before it the issues of procedural rights created by the State for consideration of a limited record on appeal, and the due process requirements of the U. S. Const., amend XIV.

By allowing the decision of the Court of Appeals of Georgia to stand, the Supreme Court of Georgia accepted the denial of Petitioner's rights of appeal and the denial of established procedural rights.

The Supreme Court of Georgia failed to provide a reasonable justification for denial of rights of appeal and procedure created by the State.

Having no justification, the denial by the Supreme Court of Georgia of the Writ of Certiorari was a violation of the Due Process Clause

CONCLUSION

The State of Georgia created rights of appeal. The State of Georgia created certain procedural rights through code and case law.

Those procedures allowed an appeal if errors were enumerated and the portions of record provided supported that enumeration of error.

In this case Petitioner came to the door of appeal asking for consideration of specific issues, carrying the key created by State code and case law.

The Court of Appeals of Georgia refused to accept that key and denied Petitioner access and consideration.

No rational basis was stated for refusal to consider the enumeration of errors.

Acting as gatekeepers, the Court of Appeals of Georgia and the Supreme Court of Georgia denied Petitioner's property rights to established procedures and violated the Due Process Clause of the U. S. Const., amend XIV.

Respectfully submitted,

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